

April 2, 2003 BZA



REQUEST ANALYSIS
AND
RECOMMENDATION

03AN0234

Rebecca B. and C. Leland Bassett

Midlothian Magisterial District
13810 Village Mill Drive

REQUEST: Appeal the Director of Planning's decision regarding permitted uses (car dealership) in a Community Business (C-3) District.

RECOMMENDATION

Recommend that the Board uphold the decision of the Director of Planning.

GENERAL INFORMATION

Location:

Property is located at 13810 Village Mill Drive. Tax ID 727-708-5604 (Sheet 5).

Existing Zoning:

C-3 with Conditional Use Planned Development

Size:

8.217 acres

Existing Land Use:

Vacant

Adjacent Zoning and Land Use:

North - R-7, C-2; Residential, commercial and vacant
South - O-2; Office and vacant
East - C-3; Commercial and vacant
West - C-3; Vacant

General Plan:

(Midlothian Area Community Plan)

Village Fringe Area

DISCUSSION

C. Leland Bassett and Rebecca B. Bassett ("Appellants") appeal the Director of Planning's determination regarding the uses permitted on the subject property. In particular, Appellants contest the Planning Director's determination that the property's zoning does not permit use of the parcel for "automobile sales".

The property is zoned Community Business (C-3) with a Conditional Use Planned Development. The Zoning Ordinance recognizes that there are certain property uses with unique characteristics, such as Conditional Use Planned Developments, that cannot be permitted by right in a particular zoning district without a particularized consideration of their impact on neighboring property and the public need for the use at the specific location. (See County Code Section 19-13, 19-14). These uses require zoning conditions to tailor the use so that it is appropriate on the specific parcel.

In 1983, the Board of Supervisors rezoned the subject property to the Community Business (B-2) zoning classification subject to a Conditional Use Planned Development ("CUPD"). To tailor the use to the property, the conditions of the CUPD added certain specific uses and excluded other specific uses, providing as follows:

- II. In the area of (B-2) zoning, in addition to the permitted uses of the (B-2) District, the following uses will be permitted by right:
 - a. fast food establishments
 - b. office-warehouses where the warehouse area does not exceed 25,000 square feet
 - c. recreational establishments, indoor
 - d. motor vehicle was as accessory use
 - e. convenience store with gas pumps
- III. The following uses normally allowed by right in the (B-2) District will be prohibited:
 - (a) Automobile service station
 - (b) Funeral homes or mortuaries
 - (c) Milk distributing stations
 - (d) Pawn and second hand stores

- (e) Occult sciences such as palm readers, astrologers, fortune tellers, tea leaf readers, prophets, etc.

Significantly, the underlying (B-2) zoning district did not permit "automobile sales" and the CUPD did not add "automobile sales" to the allowable uses of the property.

In January 1994, the County initiated an expansive, County-wide "conversion" in which the Board of Supervisors rezoned all parcels zoned "O", "B" and "M" to new "O", "C" and "I" classifications. In doing so, all parcels with the "B-2" classification were "converted" to the "C-3" classification. The "C-3" classification is similar to the old "B-2" classification but includes some uses that were not previously allowed in (B-2) Districts. "Automobile sales" was included as a restricted but allowable use in the new (C-3) District. In recognition of the unique characteristics of CUPDs, however, the conversion provided that CUPDs existing under the (B-2) classification would remain unchanged despite any rezoning of the property to one of the new "O", "C" or "I" zoning classifications.

Subsequent to the 1994 "conversion", an issue arose whether "automobile sales" was a permitted use on the subject property. On February 5, 2003, the Director of Planning issued a zoning certificate to the Appellants certifying that the current zoning of the parcel was Community Business (C-3) subject to the CUPD approved in 1983 (copy attached). In particular, the zoning certificate stated that except for those uses that were added or excluded by the 1983 CUPD, the "Permitted uses on the property are all uses permitted by right in the (B-2) zoning district". Since "automobile sales" was not a permitted use in a (B-2) District, the Director of Planning determined that it was not a permitted use on the property with its current C-3 with CUPD zoning.

The Appellants appealed the Director of Planning's determinations made in the zoning certificate. They argue that the current zoning of the subject property allows the additional uses, particularly "automobile sales", that were "added" by the 1994 conversion to C-3 zoning. See February 10, 2003 letter from Appellants' counsel (attached).

However, the Ordinance that the Board of Supervisors adopted at the time of the 1994 "conversion", which is now codified in the Zoning Ordinance at County Code Section 19-2(f), specifically provides that a CUPD that existed prior to the 1994 "conversion" remains unaltered by the conversion. In particular, County Code Section 19-2(f) states that a Conditional Use Planned Development "shall remain in effect" and, further, that "any conditions imposed or accepted as part of" a Conditional Use Planned Development "shall remain in effect." With respect to the subject property, one (1) of the conditions imposed or accepted as part of the 1983 CUPD states that the permitted uses for the property are "the permitted uses of the (B-2) District." Since "automobile sales" was not a permitted use in the old (B-2) District, "automobile sales" is not a permitted use for the property at this time, notwithstanding its current (C-3) zoning because the CUPD controls uses of the property.

In addition, Section 19-2(f) states that "If there is a conflict between conditions and this chapter, then the conditions shall apply. If there is no condition that addresses a specific use or development standard in this chapter, then the use and development standards in this chapter shall apply." The Appellants argue that this provision provides that the subject property gains any additional (C-3) uses that were not excluded by the CUPD. However, in this instance, the 1983 CUPD included not one (1), but actually ten (10) conditions that addressed "specific uses" in that it allowed fast food establishments, prohibited funeral homes, etc. Therefore, Section 19-2(f) is not applicable and does

not override the rule that the conditions of the CUPD remain in effect and that "automobile sales" is not a permitted use on the parcel.

The Board may affirm or reverse the decision of the Director of Planning, in whole or part, or may modify the decision. The affirmative vote of at least three (3) members is necessary to reverse the decision or to decide in favor of the Appellants. (See County Code Section 19-20(d)).

Staff recommends that the Board of Zoning Appeals uphold the determination of the Director of Planning as set forth in the zoning certificate of February 5, 2003.

03A110334

BEALE, BALFOUR, DAVIDSON & ETHERINGTON, P.C.
ATTORNEYS & COUNSELORS AT LAW

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(804) 788-0135
FILE NO.

12314.004

February 10, 2003

Mr. Thomas E. Jacobson, Director of Planning
Chesterfield County Planning Department
9901 Lori Road
Chesterfield, Virginia 23832-0040

RECEIVED
FEB 10 2003
DIRECTION
PLANNING DEPARTMENT

Appeal of Zoning Determination

Dear Mr. Jacobson:

We are in receipt of a zoning determination letter (the "Zoning Determination") from Norman J. Campbell, Principal Planner with Chesterfield County Planning Department, inferring that Mr. C. Leland Bassett does not have the right to locate a car dealership or other by right C-3 uses on his property. In accordance with Chesterfield County Code Section 19-19.1, this letter serves as Mr. Bassett's Notice of Appeal to the Zoning Determination to the Board of Zoning Appeals and requests that the Board of Zoning Appeals hear this case at its April 2, 2003 hearing date.

The Zoning Determination states that the property is zoned Community Business (C-3) with Conditional Use Planned Development. The letter further explains that permitted uses are those permitted in the B-2 zoning district, except for those excluded at the time of rezoning, and in addition to those uses, the following additional uses are permitted: fast food establishments, pharmacies, convenience store with gas pumps, banks, offices and grocery stores. The letter further provides that as part of a countywide conversion, Mr. Bassett's property was rezoned to Community Business (C-3) and that the previous Conditional Use Planned Development (83S141) and all associated conditions remained in effect after this conversion. However, the Zoning Determination failed to list the C-3 uses not in conflict with the CUPD, indicating that those C-3 uses are not permitted. The Zoning Determination therefore apparently sets forth the position that any use not allowed in B-2 zoning districts on the date the property was zoned B-2 are not allowed now on that property, even if they are now allowed uses in C-3 zoning districts.

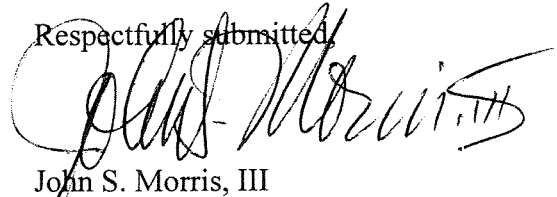
Mr. Bassett disagrees with this apparent determination of the permitted uses of the property. In effect, Mr. Bassett is being denied the C-3 permitted uses which were gained as a result of the countywide conversion which changed the zoning on his property from B-2 to C-3. Mr. Bassett acknowledges that the *conditions* of the CUPD carried forward. However, the *conditions* of the zoning on the property were the specific exclusions and additions to otherwise permitted uses in B-2 zoning districts. Otherwise, the property was and is subject to changes in the law regarding permissible uses in B-2 (now C-3) zoning districts, just like any other property then zoned B-2. Chesterfield Zoning Ordinance Article I, Section 19-2(f)(2) (attached), governs the permitted land uses of the many properties affected by the 1994 conversion and states:

If there is no condition that addresses a *specific use* or development standard in this chapter, then the *use* and development standards in this chapter shall apply. [Emphasis added.]

Accordingly, the plain language of this section and Section 19-2 as a whole clearly provide that any C-3 permitted uses which were not excluded and therefore not in conflict with the CUPD are also permitted on Mr. Bassett's property. Mr. Bassett has relied upon this understanding of the permitted uses of his property.

Therefore, we submit that the Zoning Determination, in its failure to properly apply Section 19.2(f) in its Zoning Determination, directly contradicts the County's Zoning Ordinance and infringes on Mr. Bassett's property rights.

Respectfully submitted,



John S. Morris, III
Agent for C. Leland Bassett
and Rebecca B. Bassett

JSM/kel

cc: Mr. & Mrs. C. Leland Bassett

BOARD OF SUPERVISORS

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CHESTERFIELD COUNTY
P.O. Box 40
CHESTERFIELD, VIRGINIA 23832-0040

February 5, 2003

Zoning Certificate



LANE B. RAMSEY
COUNTY ADMINISTRATOR

Mr. C. Leland Bassett
Fi-Tech, Inc.
501 Research Road
Richmond, Virginia 23236

RECEIVED
FEB 10 2003
Planning
Department

RE: 13810 Village Mill Drive
Tax Id 727-708-5604
Chesterfield County, Virginia

This letter is to certify that the property referenced above is currently zoned Community Business (C-3) with Conditional Use Planned Development.

The property was rezoned to Community Business (B-2) by the Chesterfield County Board of Supervisors on November 23, 1983 and is subject to the conditions and textual statement of zoning case 83S141. A copy of the rezoning case minutes and the textual statement are attached for your convenience.

Permitted uses on the property are all uses permitted by right in the B-2 zoning district (copy attached) except for the following uses that were excluded: automobile service station, funeral homes or mortuaries, milk distributing stations, pawn and second-hand stores, and occult sciences such as palm readers, astrologers, fortune tellers, tea leaf readers, prophets, etc. In addition to those uses, the following additional uses are permitted: fast food establishments, pharmacies, convenience store with gas pumps, banks, offices and grocery stores.

On January 12, 1994, as part of a countywide conversion of all office, commercial and industrially zoned property, the subject property was rezoned to Community Business (C-3). As part of this zoning conversion, the previous Conditional Use Planned Development (83S141) and all associated conditions remained in effect after this zoning conversion.

Should you disagree with this letter, you may file an appeal to the Board of Zoning Appeals within thirty (30) days of the date of this letter. The filing fee for an appeal of staff's decision is \$500.00. The decisions

03 A1106 24

Mr. C. Leland Bassett
February 5, 2003
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noted herein shall be final and unappealable if not appealed within thirty (30) days. If you have any further questions, please call me at (804) 796-7095.

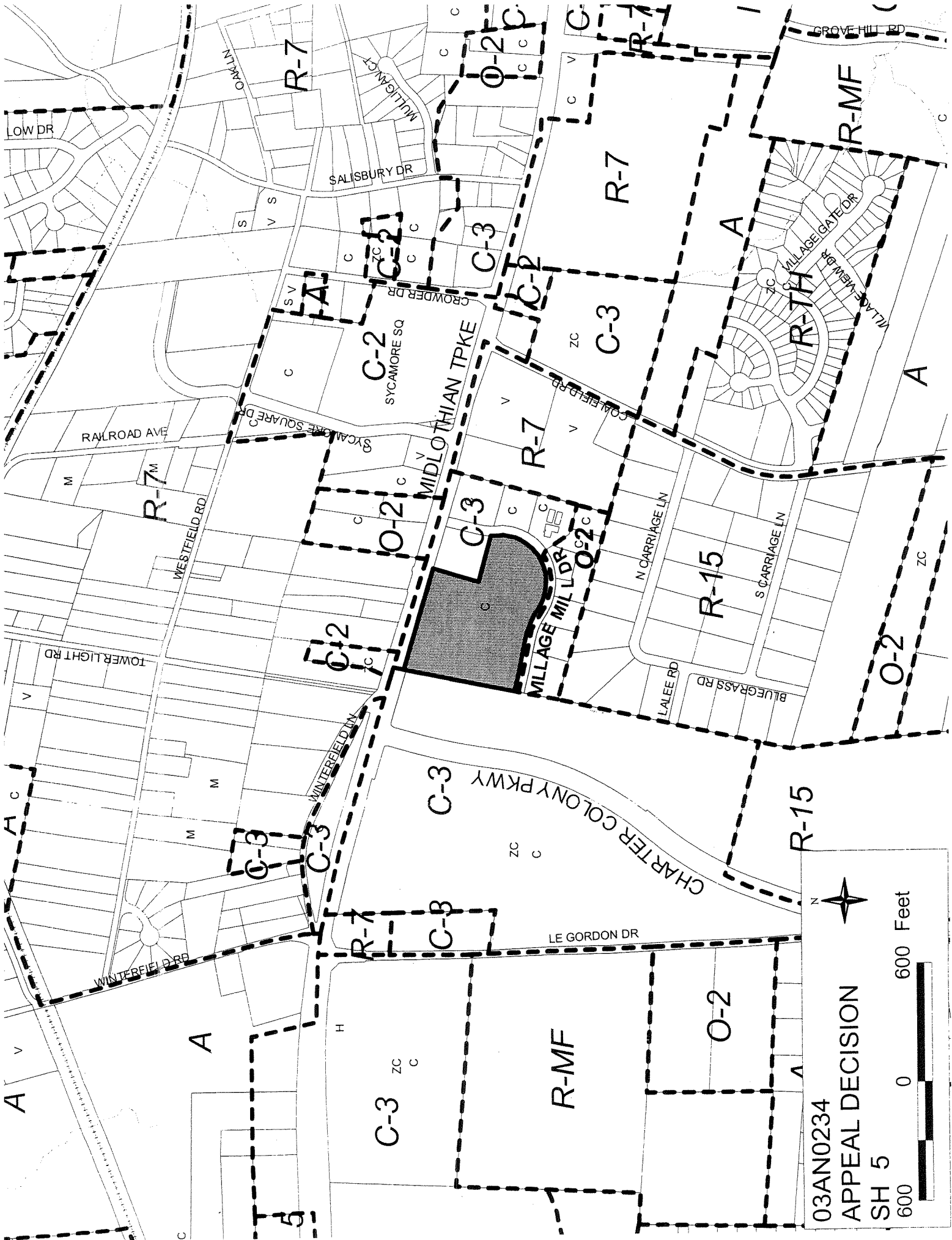
Sincerely,



Norman J. Campbell
Principal Planner

Attachments

c: David Crawford, CB Richard Ellis
John S. Morris, III, Beale, Balfour, Davidson & Etherington, PC
Tony Curp, Carmax
Honorable Members of the Board of Supervisors
Lane B. Ramsey, County Administrator
M. D. "Pete" Stith, Jr., Deputy County Administrator for Community Development
Thomas E. Jacobson, Director of Planning
William D. Poole, Assistant Director of Planning



03AN0234
APPEAL DECISION
SH 5
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